

EXHIBIT 53

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: DA VINCI SURGICAL ROBOT) Lead Case No.:
ANTITRUST LITIGATION) 3:21-cv-03825-VC

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)

THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

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SURGICAL INSTRUMENT SERVICE) Case No.
COMPANY, INC.,) 3:21-CV-03496-VC

Plaintiff,)

vs.)

INTUITIVE SURGICAL, INC.,)

Defendant.)

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VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED
DEPOSITION OF KEVIN MAY

Thursday, November 3, 2022

Remotely Testifying from Yorba Linda, California

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 5541214

1 Q. And did -- has FDA ever told you -- agreed
2 with you, that -- that as long as you don't take
3 ownership of the instruments, that you do not need a
4 510(k) clearance?

5 A. I have been informed that they refuse to 09:39:49
6 make a decision on that. So they have decided not
7 to make a decision on that. And that was in
8 reference to, I believe, Rebotix.

9 Q. Okay. I'm -- I'm asking you just, has FDA
10 ever told you that as long as you maintain -- you 09:40:11
11 don't own the instrument, then you don't need a
12 510(k) in order to extend the li- -- the lives of an
13 EndoWrist instrument?

14 A. They haven't told us, one way or another.
15 And Dr. -- Dr. An is not part of the enforcement 09:40:26
16 division of the FDA.

17 Q. Has -- has FDA ever told you you don't
18 need a 510(k) clearance in order to extend the
19 li- -- the lives of an EndoWrist instrument?

20 A. That's not the way the FDA works, no. 09:40:44
21 They've never told us, one way or another.

22 Q. Has Re- -- has Restore or any Restore
23 entity, whether it's Restore Robotics or Restore
24 Robotics Repair [verbatim] reset the EndoWrist
25 instruments -- sorry, let me start over. 09:41:19

1 Has any entity relating to Restore,
2 whether it's Restore Robotics or Restore Robotics
3 Repair [verbatim], sold an EndoWrist that has been
4 reset since February 20th, 2020?

5 MR. MAIDA: Object to form. 09:41:41

6 THE WITNESS: Not where we've taken
7 ownership; only repairs.

8 BY MR. LAZEROW:

9 Q. And has -- since February 20th, 2020, the
10 e-mail we're looking at, has any entity related to 09:41:56
11 Restore reset the use counter for an EndoWrist that
12 it does not own?

13 A. No, we have not. I believe we've stopped.
14 Intuitive had stopped us from repairing anything by
15 keeping us out of the market. So I believe we -- 09:42:18
16 we'd lost most of our customers by November --
17 October/November of 2019.

18 Q. Have you ever talked directly to Intuitive
19 about the resetting activities that Restore has
20 engaged in? 09:42:45

21 A. No.

22 Q. Have you ever worked at FDA?

23 A. No.

24 Q. Have you ever submitted an expert report
25 in litigation where your expert report gave opinions 09:42:58

1 about FDA regulatory matters?

2 A. No.

3 MR. LAZEROW: I'm going to pass the
4 witness and reserve the rest of my time, if
5 necessary, for later. Thank you. I don't have any 09:43:18
6 questions at this time, but I'll reserve for after
7 the Plaintiffs, if necessary.

8 Thank you for your time.

9 THE COURT REPORTER: May we go off the
10 record to do an audio check, please. 09:43:30

11 THE VIDEOGRAPHER: Are we closing this
12 deposition, though?

13 MR. LAZEROW: No. No, I don't think so.

14 THE VIDEOGRAPHER: No? All right.

15 We're off the record at 9:43 a.m. 09:43:39

16 (Short recess taken.)

17 THE VIDEOGRAPHER: We are back on the
18 record at 10:07 a.m.

19 EXAMINATION

20 BY MR. MAIDA: 10:07:49

21 Q. Hello, Mr. May.

22 A. Hello.

23 Q. My name is Sam Maida, and I represent the
24 Hospital Plaintiffs. We have a case that is
25 substantially similar to Restore's case, and I have 10:08:03

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1 for a few of the devices. Like we do not do the
2 staplers. We did not repair the -- the staplers.
3 And we did not repair any of the disposable devices.

4 Q. Are there any EndoWrists that could not be
5 repaired? 10:12:55

6 A. You mean, particular reference numbers or?

7 Q. Any EndoWrists, generally, that could not
8 be repaired.

9 A. There were EndoWrists that were the
10 reusable type that we -- we did not repair. But in 10:13:10
11 the future, we could have, if we did some R&D
12 efforts.

13 Q. Okay. You testified a bit earlier about
14 when Restore stopped the -- their EndoWrist repairs.

15 Was that in 2019? 10:13:32

16 A. Yes.

17 Q. Okay. And since 2019, Restore has not
18 done any EndoWrist repair; is that correct?

19 A. We have done repairs that did not require
20 resetting the counter. 10:13:52

21 Q. Okay. Was there any repairs that required
22 resetting the counters?

23 A. No.

24 Q. Was there any repairs that Restore
25 actually sent back to the hospitals for use? 10:14:10

1 A. No.

2 Q. And why is that?

3 A. Our customers were too afraid to send us
4 the business.

5 Q. Would the scope of reparable Si EndoWrists 10:14:26
6 have extended in -- overall without Intuitive's
7 anticompetitive conduct?

8 MR. LAZEROW: Objection.

9 THE WITNESS: Yes. We would have -- we
10 would have expanded few more of the 8-millimeter and 10:14:38
11 5-millimeter EndoWrists.

12 BY MR. MAIDA:

13 Q. And go back about -- to your answer that
14 customers were afraid. Why were they afraid?

15 MR. LAZEROW: Objection. 10:14:56

16 THE WITNESS: Because they received cease
17 and desist letters from Intuitive, was one of the
18 things. Another thing was is that our understanding
19 from the information from the hospitals was is that
20 the Intuitive reps were coming in -- as soon as they 10:15:12
21 figured out that there was a particular serial
22 number that had been used more than the maximum
23 number of uses on the device, the Intuitive rep
24 would come in and tell the hospital that they were
25 under contract and they could not use any other 10:15:31

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1 third parties.

2 BY MR. MAIDA:

3 Q. And those hospitals told you or someone at
4 Restore that; is that correct?

5 A. Either directly or through one of our 10:15:43
6 reps.

7 Q. How long did it take for Restore to
8 develop the technology to bypass the S and Si chip?

9 A. We started work on that in January 2020, I
10 believe it was. And we had our first usage counters 10:16:11
11 samples by, I believe it was June of 2020. So about
12 six months or so.

13 Q. Now, I'd like to talk to you a bit about
14 Restore's 510(k) clearance. You testified earlier
15 that Restore currently does have 510(k) clearance 10:16:39
16 for the Si EndoWrist remanufacturing?

17 MR. LAZEROW: Objection. Mischaracterizes
18 testimony.

19 BY MR. MAIDA:

20 Q. Does Restore currently have the 510(k) -- 10:16:50
21 510(k) clearance for EndoWrist remanufacturing?

22 A. We have 510(k) for the 420179 EndoWrist.

23 Q. Okay. Does Restore believe it needs
24 510(k) clearance to repair EndoWrists?

25 A. No, we do not. 10:17:11

CERTIFICATE OF REPORTER

I, Hanna Kim, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth remotely via videoconference and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, not in anywise interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [] was [x] was not requested.

In witness whereof, I have hereunto subscribed my name this 17th day of November, 2022.



Hanna Kim

CLR, CSR No. 13083